

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

ALTAGRACIA PEGUERO,

Plaintiff,

v.

AMERICAN EXPRESS COMPANY,
INC., THE SKLOVER GROUP, INC.

Defendant,

Civil Action No. 05-10995-RCL

AMERICAN EXPRESS COMPANY,
INC.,

Cross-Claim Plaintiff,

v.

FEDERAL INSURANCE COMPANY and
THE SKLOVER GROUP INC.,

Cross-Claim Defendants.

**DEFENDANT FEDERAL INSURANCE COMPANY'S MOTIONS TO
DISMISS AND FOR A PROTECTIVE ORDER STAYING DISCOVERY**
(Oral Argument Requested)

Cross-claim defendant Federal Insurance Company ("Federal") hereby moves this Court: (1) pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, to dismiss the cross-claim for indemnification of American Express Company, Inc. ("American Express") with prejudice; (2) to supplement Federal's November 17, 2005 motion to dismiss American Express's cross-claim for contribution; (3) pursuant to Federal Rule of Civil Procedure 26(c)(1) to enter a protective order staying discovery as to Federal pending resolution of its motions to dismiss; and, (4) in the alternative, pursuant to Federal Rule of Civil Procedure 42(b) to bifurcate the cross-claims against Federal pending resolution of plaintiff's claims against American Express. In connection

with this application, Federal is filing a separate motion pursuant to Local Rule 7.2 seeking leave to file under seal the memorandum of law and accompanying exhibits in support Federal's Motions to Dismiss and for a Protective Order Staying Discovery.

Federal moves this Court for dismissal of American Express's cross-claims for contribution and indemnity because those cross-claims fail as a matter of law. For this reason, Federal also requests a protective order to preclude American Express from seeking discovery from Federal while these motions to dismiss are pending. In the alternative (and in the event the Court allows American Express to pursue its contribution and indemnity claims against Federal), Federal respectfully requests that the Court bifurcate this action so that American Express's cross-claims against Federal are heard following a resolution of plaintiff's claims against American Express. American Express's cross-claims against Federal apply only in the event plaintiff is successful in her action. In such a circumstance, it would be more efficient to have plaintiff's claims resolved first.

REQUEST FOR ORAL ARGUMENT

Pursuant to Local Rule 7.1(D), Federal Insurance Company respectfully requests oral argument on this motion.

Date: June 5, 2006
Boston, Massachusetts

By its attorneys,

/s/ Mark Corner

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CERTIFICATION PURSUANT TO LOCAL RULE 7.1(A)

Mark W. Corner, counsel of record for the Defendant Federal Insurance Company, hereby certifies that on June 5, 2006, Danielle M. Aguirre of the law firm of Paul, Weiss, Rifkind, Wharton & Garrison LLP, co-counsel to Federal Insurance Company, conferred by telephone with John F. Farraher, counsel to American Express, in an effort in good faith to resolve or narrow the issue presented in this motion, as required by Local Rule 7.1(A)(1), and that the parties were unable to resolve the issues raised in this motion.

**SIGNED UNDER THE PENALTIES OF PERJURY THIS 5th DAY OF
JUNE 2006.**

/s/ Mark Corner

CERTIFICATE OF SERVICE

I, Mark W. Corner hereby certify that on this date, June 5, 2006, I caused to be served the foregoing document, along with the accompanying Motion for Leave to File Additional Papers, by electronic notice, upon the following counsel of record:

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/s/ Mark Corner
Mark W. Corner